

John Menzies, PLC, d/b/a Ogden Ground Services, Inc. and International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 24. Case 36-RC-6169

July 29, 2003

DECISION AND ORDER

BY MEMBERS SCHAMBER, WALSH, AND ACOSTA

On September 23, 2002, the Union filed a petition seeking to represent all full-time and regular part-time ramp agents, ramp leads, cleaners, cleaner leads, lavatory technicians, and mechanic helpers employed by the Employer at Portland International Airport in Portland, Oregon. The Employer asserts that it is directly controlled by Alaska Airlines, a common carrier subject to the jurisdiction of the Railway Labor Act, and that, therefore, the National Labor Relations Board lacks jurisdiction under Section 2(2) of the National Labor Relations Act. After a hearing, the Regional Director transferred the proceeding to the Board.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board finds:

The Employer provides aviation support services for Alaska Airlines (Alaska), its only customer at the Portland International Airport. These services include baggage handling, operating specialized commercial aircraft service equipment, and cleaning and restocking aircraft cabins.

The record indicates that Alaska exercises substantial control over the Employer's Portland operations. Although the contract between the Employer and Alaska states that the Employer is responsible for supervision of its employees, Alaska's operations personnel often direct and supervise the Employer's employees and maintain frequent communication with them on a daily basis. For example, Alaska employees sometimes direct that the cleaning performed by the Employer's employees be redone. The Employer is required to complete and submit paperwork to Alaska regarding various daily operations and security searches required by Alaska. The Employer must maintain records according to specific Alaska guidelines, and Alaska regularly audits these records.

Alaska monitors the Employer's compliance with its service standards, and Alaska retains the right to request the Employer to remove an unsatisfactory employee. Although the Employer hires its own employees, the Employer's Portland station manager testified that the Employer has never refused Alaska's request to reassign or remove an employee. Alaska requires the Employer to follow Alaska's operating and training procedures, and

sometimes Alaska directly trains the Employer's employees.

Alaska provides and maintains most of the equipment used by the Employer's employees, including aircraft servicing equipment, various types of computer equipment, and work areas. The Employer also subleases office space from Alaska at below market value. Alaska extends the same flight benefits to the Employer's employees as it does to its own employees. Alaska also gives the Employer's employees T-shirts, hats, and occasional invitations to social activities for Alaska employees. Although the Employer provides its own uniforms, Alaska requires compliance with personal appearance standards.

Section 2(2) of the Act provides that the term "employer" shall not include "any person subject to the Railway Labor Act." 29 U.S.C. § 152(2). Similarly, Section 2(3) of the Act provides that the term "employee" does not include "any individual employed by an employer subject to the Railway Labor Act." 29 U.S.C. § 152(3). The Railway Labor Act, as amended, applies to:

Every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner or rendition of his service.

45 U.S.C. § 151 First and 181.

On February 12, 2003, the Board requested that the National Mediation Board (NMB) study the record in this case and determine the applicability of the Railway Labor Act to the Employer. The NMB subsequently issued an opinion stating its view that the Employer is a carrier subject to the Railway Labor Act. *Ogden Ground Services, Inc.*, 30 NMB 404 (2003).¹ The NMB's opinion specifically concluded that the facts in this case are distinguishable from previous NMB cases involving Ogden operations where the NMB had determined that those operations were not subject to the Railway Labor Act. See, e.g., *Ogden Aviation Services*, 23 NMB 98 (1996); *Ogden Aviation Services*, 20 NMB 181 (1993). See also *Ogden Aviation Services*, 320 NLRB 1140 (1996).

¹ The NMB uses a two-pronged jurisdictional analysis: (1) whether the work is traditionally performed by employees of air or rail carriers; and (2) whether a common carrier exercises direct or indirect ownership or control. The NMB concluded that both prongs of the test had been met.

Having considered these facts in light of the opinion issued by the NMB, we find that the Employer is engaged in interstate air common carriage so as to bring it within the jurisdiction of the NMB pursuant to Section 201 of Title II of the Railway Labor Act. Accordingly, we shall dismiss the petition.

ORDER

It is ordered that the petition in Case 36-RC-6169 is dismissed.